

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DAVID ALLEN MINOR,

Plaintiff,

v.

Civil Action No. 5:06-CV-75  
(Judge Stamp)

SGT. THOMAS F. YANERO,

Defendant.

U.S. DISTRICT COURT  
FILED AT WHEELING, WV  
NOV 26 2008  
NORTHERN DISTRICT OF WV  
OFFICE OF THE CLERK

**REPORT AND RECOMMENDATION THAT ACTION BE DISMISSED WITHOUT  
PREJUDICE**

At the scheduled Evidentiary Hearing and Argument on Defendant's Motion to Compel, held on November 25, 2008, the Defendant appeared via telephone by Assistant Attorney General, Virginia Grottendieck Lanham. Plaintiff did not appear in person or by telephone. Assistant Attorney General Grottendieck Lanham had notified Plaintiff of the scheduled hearing and of his right to appear by telephone. On November 24, 2008, Plaintiff sent a facsimile to Assistant Attorney General Grottendieck Lanham which said he had filed papers in July to dismiss the case without prejudice. The Court's docket does not reflect any such communication from Plaintiff. A copy of the facsimile is attached hereto.

Based upon Plaintiff's request, to which Defendant does not object, I recommend this action be dismissed without prejudice.

Any party who appears *pro se* and any counsel of record, as applicable, may, within ten (10) days of the date of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be submitted to the

District Court Judge of Record. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

DATED: November 26, 2008

/s/ *James E. Seibert*  
JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE